

to, the remedy of eviction, and any law, ordinance, or regulation which purports to require such compliance is similarly without force and effect.

(c) It is the purpose of the Department that these regulations shall bar all actions of a board that would in any way frustrate the purpose or effect of these regulations or that would in any way delay, prevent or interfere with the implementation of any increase in rental charges approved by HUD.

(d) These regulations may be offered as a defense to a proceeding by whomsoever initiated, which may be brought or threatened to be brought against any owner, mortgagor or managing agent of a project subject to these regulations who demands, receives or retains, or seeks to demand, receive or retain, rental charges approved by HUD, or as a basis for declaratory, injunctive or other relief against any person or agency, public or private, who attempts to enforce, or threatens to enforce, any state or local law, ordinance, or regulation which is without force and effect by reason of this regulation.

(e) This part applies to mortgages insured under the National Housing Act. It does not apply to mortgages insured under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707).

[40 FR 49318, Oct. 22, 1975. Redesignated at 49 FR 6713, Feb. 23, 1984, and amended at 58 FR 64038, Dec. 3, 1993; 59 FR 62524, Dec. 5, 1994]

Subpart B—Unsubsidized Insured Projects

SOURCE: 44 FR 58504, Oct. 10, 1979, unless otherwise noted. Redesignated at 49 FR 6713, Feb. 23, 1984.

§ 246.4 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD, except those to which subpart C applies.

[40 FR 49318, Oct. 22, 1975. Redesignated at 49 FR 6713, Feb. 23, 1984]

§ 246.5 Rental charges.

The Department will generally not interfere in the regulation of rents by a rent control board or agency con-

stituted under State or local laws (hereinafter referred to as board) for unsubsidized projects with mortgages insured or held by HUD. However, HUD will preempt the regulation of rents, together with any board regulations which require the mortgagor to offer a lease for a term in excess of one year, under certain conditions. This preemption may occur for such a project when the Department determines that the delay or decision of a board prevents the mortgagor from achieving a level of residential income necessary to maintain and operate adequately the project, which includes sufficient funds to meet the financial obligations under the mortgage."

§ 246.6 Initiation.

When a mortgagor determines that the permitted increase in rents as prescribed by the board will not provide a rent level necessary to maintain and operate adequately the project, and the mortgagor elects to request preemption under this subpart, it shall:

(a) File an application for whatever relief or redetermination is permitted under the State or local law and;

(b) Notify: (1) The tenants in accordance with § 246.7 of this subpart, (2) the appropriate HUD office pursuant to § 246.8, and (3) the board of the mortgagor's intention to file a request for preemption of local rent control regulation pursuant to the provisions of regulations in this subpart. This action may be taken if either the board's written decision is unacceptable to the mortgagor or no written decision is received from the board within 30 days of the mortgagor's request under paragraph (a) of this section.

§ 246.7 Notice to tenants.

At least 30 days before filing a formal request to HUD for preemption of local rent control regulations, the mortgagor shall notify the tenants of its intention to so file. Copies of the Notice shall be:

(a) Delivered directly or by mail to each tenant; and

(b) Posted in at least 3 conspicuous places within each structure or building in which the affected dwelling units are located.

§ 246.8

24 CFR Ch. II (4–1–12 Edition)

The Notice shall contain the addresses where the materials, which constitute a complete submission as required by § 246.8 in support of the proposed preemption request, are to be made available to tenants as well as the required information in the following equivalent format:

NOTICE TO TENANTS OF INTENTION TO FILE A REQUEST TO HUD FOR PREEMPTION OF LOCAL RENT CONTROL REGULATIONS

Date of Notice

Take notice that on (Date) we requested the (Name) board to review our application for redetermination of permitted rents.

Take further notice that on (Date), if the (Name) board fails to approve an income level necessary to maintain and operate adequately the project, or to act upon our request, we plan to file a request for preemption of local rent control regulations for (Name of Apartment Complex) with the United States Department of Housing and Urban Development (HUD) which will result in an increase in your rental rate as provided within the terms of your lease. The requested preemption action is supported by the following:

(1) HUD approved Gross Potential Income: Year approved, ____, \$ ____.

(2) Current Total Residential Rents Allowed by Local Rent Control Board, \$ ____.

(3) Projected Total Annual Residential Rents Allowable Under Local Board Regulations 6 Months After Date of this Notice, \$ ____.

(4) Income Required to Operate Project as Supported by Profit and Loss Statement Being Submitted to HUD, \$ ____.

Copies of the materials that we intend to submit to HUD in support of our request will be available during normal business hours as well as one evening a week after business hours which will be (Day) at (Address) for a period of 30 days from the date of this Notice. The materials may be inspected and copied by tenants of (Name of Apartment Complex and HUD Project No.) and if the tenants wish, by legal or other representatives duly authorized in writing to act for one or more of the tenants.

During a period of 30 days from the date of this notice, tenants of (Name of Apartment Complex and HUD Project No.) may submit written comments on the proposed preemption request to us at (Address). Tenant representatives may assist tenants in preparing those comments. The inspection and comment period will be extended as necessary to (a) assure a 30-day comment period on a complete mortgagor's submission and (b) to allow at least 5 days to comment on any written decision made by the board, if the decision is received by the mortgagor on or

before the expiration of the thirty-day period and it was not available to the tenants during the first 25 days of the 30-day period. These comments will be transmitted to HUD, along with our evaluation of them and our preemption request. You may also send a copy of your comments directly to HUD at the following address: United States Department of Housing and Urban Development, (address of local HUD field office with jurisdiction over preemption of rents for the project) Attention: Director, Housing Re: (Project No.) and (Name of Apartment Complex). HUD will approve or disapprove the preemption request in whole or in part upon reviewing the materials and comments. When HUD advises us in writing of its decision on our request, you will be notified at least 30 days before any change in the rental structure is put into effect, in accordance with the terms of existing leases.

(Name of mortgagor or managing agent)

The mortgagor shall comply with all representations made in this Notice.

§ 246.8 Materials to be submitted to HUD in support of preemption request.

(a) After posting or delivery of the Notice as required by § 246.7, the mortgagor shall immediately send HUD notification of its intention to file a preemption request, to include:

(1) The written Notice to the tenants, which will state the date of its posting and distribution.

(2) An annual Statement of Profit and Loss, on a form prescribed by the Commissioner, audited by an independent public accountant and covering the most recently ended accounting year, and if more than four months have elapsed since the date of the Profit and Loss Statement, an unaudited accrual Profit and Loss Statement on a form prescribed by the Commissioner for the intervening period since the date of the annual statement, with the mortgagor's certification as to its accuracy.

(3) A certified statement which provides a separate breakdown for the percentage of vacancies for the present and previous year.

(4) A certified statement which provides a separate breakdown of the actual rent loss due to nonpayment of rent for the past 2 years.

(5) A certified statement which provides a separate breakdown of rent loss